IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1485 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRABHAI R RATHOD - Petitioner(s)
Versus
D S P BHAVNAGAR & 2 - Respondent(s)

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Appearance :

MR SN THAKKAR for Petitioner(s) : 1,

MR L B DABHI, Ld.AGP for Respondent(s) : 1 - 2.

FRESH NOTICE REQD(R) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 20/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the dismissal order dated 09.11.1992 passed by the District Superintendent of Police Bhavnagar, without giving an opportunity of hearing or any inquiry whatsoever. The petitioner has also prayed for quashing and setting aside the action of the respondents to evict the petitioner from his residential quarter without giving any opportunity of hearing.

2. It is the case of the petitioner that the petitioner was appointed as Police Constable in the year 1983. Since 1986 the petitioner was working as Police Constable under Jesur Police Station. On 30.10.1989 a criminal case was registered against the petitioner by Summary Case No.259/90 for the offences punishable under Sections 66-B, 65-E and 65-A of the Prohibition Act. By order dated 30.11.1989 the petitioner was suspended in pursuance of his alleged involvement in the above criminal case. By order dated 29.10.1991, the

learned JMFC, Palitana ordered Rs.250 fine and three months sentence in pursuance of the above criminal case.

3. Being aggrieved by the order of the learned JMFC, Palitana, the petitioner filed an Appeal No.35/91 before the learned Sessions Judge at Bhavnagar who vide order dated 1.11.1991, suspended the order of sentence passed by the learned JMFC, Palitana. Thereafter, the petitioner made an application to the respondent authority stating that since the order of sentence has been suspended by the learned Sessions Judge, the petitioner may not be evicted from the quarter till the final decision of the above Appeal. The respondent considered the application of the petitioner and assured him that he would not be evicted from the quarter until the final decision of the criminal case registered against him.

4. The petitioner thereafter filed an appeal being Misc.Civil Application No.115 of 1992 before the learned District Judge, Bhavnagar inter alia praying that he should not be evicted from his quarter pending the decision of the Appeal before

the learned Sessions Judge, Bhavnagar. The said appeal was pending before the learned Sessions Judge on the date of filing of present petition. It is further stated in the petition that inspite of the above, the respondents have sealed the house of the petitioner in his absence. The petitioner was not given any opportunity of hearing before the above incident. The respondents have affixed a Notice dated 20th August, 1992 to evict the quarter within three days while the petitioner was on leave and was out of station. Thus, the petitioner is out of his house since last four months. Thereafter, the respondent vide order dated 09/11/1992 has dismissed the petitioner from the services without holding any inquiry or without following any due procedure of law under Article 311(2)(A) of the Constitution of India. Being aggrieved by the said order of dismissal, the petitioner filed the present petition before this Court.

5. This Court has issued notice on 25. 02.1983 and passed an order of status quo as on that day with regard to the quarter in question. The court has also granted liberty to amend the petition and as

per the amended petition the learned Additional Sessions Judge, Bhavnagar, confirmed the order of conviction and sentence passed by the learned Judicial Magistrate First Class, Palitana in Criminal Appeal No.359 of 1991. The petitioner thereupon filed Criminal Revision Application No.401 of 1992 challenging the order passed by the learned Additional Sessions Judge, Bhavnagar, in Criminal Appeal No.359 of 1991. The said Revision Application was admitted by this Court and the petitioner was released on bail by order dated 23.12.92.

6. The petition was admitted and rule was issued on 20.10.93. Ad-interim relief granted earlier was ordered to be continued. On 15.03.1994 this Court has passed the order and observed that the matter is pending before the District Court by way of an appeal. So far as the interim relief pertaining to the possession of the quarter is concerned, obviously, it should not be granted. The Court has thereafter vacated interim relief and liberty was granted to the petitioner to apply for interim relief on a future date, if so required.

7. The petitioner has mainly challenged the order of dismissal on the ground that the petitioner has been dismissed without following any due procedure of law or without holding any inquiry under Article 311 (2) (A) of the Constitution of India. Article 311(2) (A) of the Constitution does not give the blanket licence to the disciplinary authority for straightway passing the order merely on the Government servant being convicted on a criminal charge without even affording to him any opportunity to show cause against the quantum of punishment. Mere conviction on a criminal charge would not dispense with the requirement of atleast an application of mind on the part of the disciplinary authority on the quantum of punishment after affording a reasonable opportunity to the delinquent to be heard in regard to the quantum of punishment. Reliance was placed on decision of this Court reported in 1982 GLH 687 wherein it is held that “failure to give notice to show cause before imposing a penalty even in case of a Government Servant convicted by a Criminal Court nullifies the order of penalty.” Further reliance was also placed

in case of H.P.Thakore Vs. State of Gujarat reported at 20 GLR 109 wherein it is held that the disciplinary authority has to determine just penalty neither too lenient nor too harsh and the authority must make an honest attempt to ascertain just penalty. Thus, from the above observation, it is clear that for making just attempt to decide the quantum of penalty, the disciplinary authority must give an opportunity of hearing to the petitioner because the say of the delinquent would be very much necessary to decide the just penalty. It has been contended that as the disciplinary authority has not given any opportunity of hearing to arrive at a balanced decision of penalty which is neither too harsh nor too lenient in nature, the order of dismissal required to be quashed and set aside by this Court as being illegal, arbitrary, without application of mind, against the principle of natural justice and in violation of settled legal principles. It is further contended that the petitioner has filed an Appeal against the order of learned JMFC, Palitana and the learned Sessions Judge, Bhavnagar suspended the order of the learned

JMFC, Palintana till further orders. It is further contended that unusual procedure followed by the respondent for evicting the quarter is contrary to the provisions of law. The petitioner was evicted from his residential premises without giving any opportunity of hearing or without following any usual procedure for eviction. It is therefore submitted that the action of the respondents to evict the petitioner from his quarter,requires to be quashed and set aside.

8. Mr.L.B.Dabhi, learned Asst.Government Pleader appearing for the respondent has drawn the attention of the Court to the affidavit in reply filed by the respondent authority. He has submitted that in view of the conviction order passed against the petitioner, the respondent no.1 had dismissed the petitioner without holding any inquiry as per provisions of Article 311(2)(A) of the Constitution of India. Being aggrieved by an order of dismissal, the petitioner has approached this Hon'ble Court though it was open to him to file an appeal before the DG and IGP, Gujarat State, as per provisions of the Bombay Police Act and rules made thereunder. As

the petitioner has not exhausted equally efficacious remedy available to him, the petition deserves to be dismissed.

9. He has further submitted that after dismissal of the petition, the petitioner had no right to occupy the quarter allotted to him. It was found that the petitioner was carrying on illegal activities in the quarter occupied by him. It was also reported to respondent no.1 by policemen residing in the police line that the petitioner was doing illegal activities and therefore, ultimately possession of the quarter was taken on 18th December, 1992. The petitioner had approached the learned Civil Judge (S.D.), Bhavnagar, by filing Regular Civil Suit No.405/92 praying that the respondents should not interfere with his possession of the quarter. In the said suit, application below Exh.5 filed by the petitioner was dismissed on 5th September, 1992. Against the said order, an appeal has been preferred by the petitioner, which is pending for hearing.

10. He has further submitted that impugned actions taken by the respondent authorities are just, legal

and proper. The petitioner has no legal or fundamental right to continue in service after being convicted in a criminal case. A policeman, whose one of the functions is to see that law and order is maintained within his jurisdiction cannot be expected to act in an illegal manner, and he cannot be expected to have 52 bottles of liquor especially when having possession of liquor is illegal as per provisions of Bombay Prohibition Act. The petitioner has therefore, no legal or fundamental right to continue in service or to occupy the quarter which was allotted to him when he was in service.

11. Mr.Dabhi has further submitted that on the basis of conviction by a criminal court, the petitioner was rightly dismissed without holding any inquiry. It is not necessary to hear the petitioner before imposing penalty especially when the petitioner was punished on the basis of conviction by a criminal Court. He has further submitted that by mere filing an appeal, it cannot be said that the order of conviction has been stayed or set aside. If ultimately the petitioner is acquitted by any

higher court, he will be taken back in service as per legal provisions and an appropriate action will be taken for initiating departmental proceedings if thought fit by the respondent authorities.

12. In support of his submission, Mr.Dabhi, ld.AGP, has relied upon decision of the Hon'ble Supreme Court in case of K.C.Sareen Vs.C.B.I., Chandigarh reported in AIR 2001 SC 3320, wherein it is held that it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a Court order suspending the conviction.

13. Mr.Dabhi, has further relied upon the decision of Full Bench of this Court in case of P.D.Waghela and Ors. Vs. G.C.Raiger, Deputy IGP and others reported in 1994 (1) GLR 240, wherein this Court has held that the conviction envisaged in clause (a) of the second proviso to clause (2) of Art.311,

to from a basis for the dismissal, removal or reduction in rank, could be one recorded by a competent criminal court in the first instance and the preferring of an appeal or revision against such conviction and the pendency of the same will not alter the position and action, taken on the basis of such conviction, need not conform to clause (2) of Art.311, since by the express terms of the second proviso thereto, clause (2) of Article 311 is dispensed with."

14. Mr.Dabhi further relied on the decision of this court in case of J.A.Khimsuria IMV Vs. State of Gujarat and others, rendered on 19.07.2005 in Special Civil Application No.14805 of 2005, wherein this Court has taken the view that as per the service rules and as per the provisions of Article 311 of the Constitution of India, it is not obligatory on the part of the department to hold full-fledged inquiry and upon conviction of an employee, the department should immediately pass appropriate order in accordance with law without waiting for indefinite period.

15. After having considered the submissions made and

contentions raised on behalf of the petitioner, after having heard the learned Asst.Govt.Pleader Mr.L.B.Dabhi and after having gone through the memo of petition as well as affidavit in reply and authorities cited before the Court, the Court is of the view that though aforesaid judgments are rendered in connection with corruption charges and involving moral turpitudes, strictly speaking, the ratio laid down therein are squarely applied to the facts of the present case. In the present case, the petitioner was found with liquor bottles and he was convicted on the said charges. The petitioner being police personnel it was expected from him to maintain law and order. Since he was found guilty of these charges, he was convicted and appeal preferred against conviction was dismissed. The Court is therefore of the view that it is not just and appropriate to exercise its discretion to interfere in the order of dismissal at this stage relying upon the decisions of this Court as well as of the Hon'ble Supreme Court. In the event of the petitioner being acquitted in criminal proceedings the petitioner may stake his claim for

reinstatement with continuity of service and other benefits as the order of dismissal is based solely upon the conviction of the petitioner in criminal proceedings, subject to the respondent's right to initiate departmental proceedings afresh.

16. Subject to the aforesaid observations, the petition is dismissed. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

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